

Appln. No. 09/234,695
Amendment dated December 13, 2004
Reply to Office Action mailed July 12, 2004

REMARKS

Reconsideration is respectfully requested.

Claims 17 through 26 remain in this application. Claims 1 through 16 were previously cancelled. No claims have been withdrawn. Claims 27 and 28 have been added.

The present Amendment attends to fixing some minor misspellings in the claims that are not thought to affect the patentability of the application.

Claims 17 through 26 have been rejected under 35 U.S.C. Section 103(a) as being unpatentable over MizziSoft (www.mizzisoft.com).

Initially, with respect to the applicability of the MizziSoft document to the present invention, it is noted that the last page of the document provided to the applicant is a printout not from the MizziSoft website (which the remainder of the document appears to be) but appears to be from the www.archive.org ("The Wayback Machine") website. A hand-written notation on the last page states "web screen shots accessed via this date" and points to a circled date of "Dec 07, 1998". However, it is clear from the subsequent dates listed on the "Wayback Machine" page that the printout of this page of the "Wayback Machine" website occurred after June 3, 2003 (i.e., the date of the latest listed capture of the MizziSoft website contents on the archive.org site). It is submitted that this discrepancy between the date that the "webscreen shots" were allegedly accessed calls into question the accuracy of this handwritten (and obviously subsequent) note that is being relied upon to establish the printout as prior art.

Further, and perhaps more importantly, the content of the MizziSoft website printout itself does not establish that all of the actual content of the printout actually predates the filing date of this patent application. In particular, the copyright notice on the printout includes a range of year

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dates "1999-2000". Significantly, each section of the printout of the MizziSoft website includes the text "Site Lat Updated: 1 June 2000". This indicates that this printout is clearly not a printout of the pages of the site as they existed on or before "Dec 07 1998", and is not even a printout of the pages as they existed prior to "1 June 2000". While some portions of the pages of the MizziSoft printout *might* have existed prior to the filing date of the present patent application, it is clear that there are some portions of the printout of the MizziSoft website that were not part of the website prior to the filing date of the present application. This later date of "1 June 2000" in the "copy" of the MizziSoft webpage (and on the "Wayback Machine" website under the Dec 07 1998 date) shows that the information on the archive.org website obviously been updated after the "Dec 07 1998" or the entry for the Dec 07, 1998 date includes information grabbed from the MizziSoft website after the Dec 07 1998 date (perhaps through the presence of hyperlinks to the actual MizziSoft website that are still active in the representation on the archive.org website). And it is difficult, if not impossible, to establish what portions of the printout from the Wayback Machine website at the link "Dec 07 1998" originate from that date and what portions were added later.

The Patent Office is thus requested to supply a copy of a printout of the MizziSoft website that actually corresponds to a date prior to the filing date of the present application.

Without conceding that the MizziSoft printout actually represents "prior art" to the present application, the applicability of the MizziSoft webpage printout will be discussed. It is noted that claim 19 requires, in part, "accepting by the computer system a conditional offer from a first employee, assigned to work a first shift, to trade the first shift for another shift on the preliminary schedule of another employee" and "displaying to other employees the conditional offer to trade the first shift for another shift". (Claims 17 and 18 also include similar requirements.) The invention,

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particularly with these features, facilitates the trading of shifts between employees and these aspects of the trade may be administered without requiring significant management participation. The claimed invention, and especially these aspects, make the trading of shifts easier where the employees are not necessarily in the same place at the same time temporally or geographically, e.g., the pool of employees works at different time shifts and therefore are not necessarily in contact with each other, or when the pool of employees works at different locations. The proposed shift trade is vetted against criteria for the trade which may include various concerns that the employee must meet for the other shift or job.

The MizziSoft document shows a description of some aspects of software for rostering/scheduling, among other things. In the rejection of the claims in the Office Action, it is conceded that:

However, MizziSoft does not expressly disclose displaying to other employees the first user's conditional offer

as well as:

[] checking by the computer system a length of time between a time of receipt of the conditional acceptance and a time of occurrence of the first shift and the second shift against a minimum time period for trading shifts to verify that the length of time is not less than the minimum time period.

In particular, it is noted that the MizziSoft document includes only one short statement on the availability of shift swapping, which occurs on page 9 of the document:

Shift Swapping is also available to accommodate movements and adjustments as required.

However, this short statement provides one of ordinary skill in the art with little or no information as to how any shift swapping might be carried out, and particularly that there is any communication through the computer system of an offer by one employee of a shift to another employee, especially through a display of the conditional offer. Clearly, the mere

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suggestion in the MizziSoft document that employees may be able to "roster themselves" does not inform one of ordinary skill in the art that the MizziSoft system allows and enables one of the employees to submit a conditional offer to trade to the system or displays the conditional offer to other employees. The MizziSoft document merely discusses the implementation of a shift-scheduling grid or board in a computer system, where employees are able to see their shifts and the shifts of others, but requires the employee to use other channels to seek other employees to cover his or her shift.

It is contended in the Office Action that:

MizziSoft teaches displaying the schedule and shifts, a user's ability to swap assigned shifts, and a user's ability to only enter information against his/her name in the on-line program. It is well-known in places of employment that when an employee wants to swap shifts, he/she must locate another employee with which to swap by verbally communicating with other employees or by posting a message for other employees to see.

It is further contended in the Office Action that:

Since the system of MizziSoft only allows an employee to make changes against his/her name, it would have been obvious to one of ordinary skill in the art at the time of the invention to display the conditional offer in the on-line tool when the first user enters a request to swap shifts in order to efficiency of the tool in allowing users to swap shifts by streamlining the known process of swapping shifts.

It is submitted that one of ordinary skill in the art, considering the MizziSoft document, would not find it obvious to modify the MizziSoft system to include "accepting by the computer system a conditional offer from a first employee, assigned to work a first shift, to trade the first shift for another shift on the preliminary schedule of another employee" and "displaying to other employees the conditional offer to trade the first shift for another shift". There is nothing in the MizziSoft document that suggests that the MizziSoft system actually accepts "a conditional offer from a first employee *** to trade [the] first shift for another shift". As noted in the

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Office Action, the MizziSoft document merely shows an employee the shift schedule of all employees "but only have access to enter against their name" (MizziSoft document at page 9, section 3). This does not suggest to one of ordinary skill in the art that the MizziSoft system is able to accept any conditional offers for shift trading from an employee.

For all one of ordinary skill in the art can determine from the MizziSoft document, the MizziSoft system may rely upon informal communications between employees to find out about, and agree upon, trades in shifts, and after the agreement has been reached by the employees, the corresponding changes to the shift schedules of the employees may only then be entered by each employee to his or her respective schedule based upon that employee's limited access to his or her schedule.

It is noted that the majority of the MizziSoft document is directed to the organization and implementation of shifts by a management entity, with limited discussion of employees' ability to "self-roster", which centers around an employee's request to management for a particular shift (morning, afternoon, and night), request to management for a preferred day off, indication to management of availability or unavailability, and request to management for annual leave. Thus, the "self-rostering" aspects of the MizziSoft system appear to be directed solely to communicating the employee's requests to the management entity that will create, or has created, the roster.

It is therefore submitted that the MizziSoft document would not lead one of ordinary skill in the art to the applicant's claimed invention as defined in claims 17, 18, and 19, especially with the requirements set forth above, and therefore it is submitted that claims 17, 18, and 19 are allowable over the prior art. Further, claims 20 through 28, which depend from claim 1, also include the requirements discussed above and therefore are also submitted to be in condition for allowance.

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Withdrawal of the §103(a) rejection of claims 17 through 26 is
therefore respectfully requested.

CONCLUSION

In light of the foregoing amendments and remarks, early
reconsideration and allowance of this application are most courteously
solicited.

Respectfully submitted,

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